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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RONALD BIKASH NARAYAN, Defendant and Appellant.	A125638 (Alameda County Super. Ct. No. H46265)

Ronald Bikash Narayan appeals from his conviction, following a plea of no contest, on one count of stalking. (Pen. Code, § 646.9, subd. (b).) His counsel raises no issues and asks this court for an independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436.

From January 29, 2007 to April 15, 2008, appellant followed and harassed his spouse at her workplace and in her home. The stalking culminated on the evening of April 15, 2008, when appellant choked his wife. The People charged appellant with the following three counts: count one for first degree residential burglary, count two for corporal injury to spouse, and count three for stalking. (Pen. Code, §§ 459, 273.5, subd. (a), 646.9, subd. (b).)

Appellant entered a plea bargain on January 26, 2009. He pled no contest, or nolo contendere, to count three (stalking) without an indicated sentence, in exchange for dismissal of the other charges and a promise of no commitment to state prison.

The trial judge discussed with appellant the circumstances of this conviction, the consequences of entering a plea of no contest, and the assignment of a different

sentencing judge. The trial judge also advised appellant of immigration consequences under Penal Code section 1016.5. In relevant part, the trial judge told appellant, "If you're not [a citizen of the country], this conviction could cause you to be deported, denied citizenship, and permanently kept out of the country." The trial judge also reviewed the *Tahl* waiver form that appellant initialed and signed. The *Tahl* waiver indicated that appellant understood the immigration consequences of his conviction and that he reviewed the waived rights with his attorney. After reviewing the charges and the circumstances, the trial judge confirmed that appellant entered his plea voluntarily and knowingly by asking whether appellant understood the discussion. Appellant verbally re-affirmed his understanding and assent of his waived rights to the trial judge.

The court correctly convicted appellant of one count of stalking. The standard for a valid plea is whether appellant submitted the plea voluntarily and intelligently in light of available alternatives. (*In re Resendiz* (2001) 25 Cal.4th 230, 244-245.) Appellant expressly reaffirmed his waivers after the court discussed with him the consequences and alternatives to entering his plea. The court appropriately solicited responses to determine that appellant's change of plea met the standard for a valid disposition of the charges.

However, five months later, appellant moved to withdraw his plea, claiming ineffective assistance of counsel. He argued that his former attorney failed to advise him of both the potentially severe immigration consequences and the one-year jail sentence for stalking. Appellant's declaration from May 13, 2009, alleges that "no one" advised him of the following: the one year sentence for stalking, the effect of the conviction in immigration court and federal courts, and other severe consequences to his immigration status. The court properly granted appellant a new attorney on June 26, 2009.

The court also correctly denied appellant's motion to withdraw his plea. Although appellant claimed that his attorney failed to advise him under Penal Code section 1016.5, the record reflects that the trial judge recited Penal Code section 1016.5, subdivision (a) to the appellant. The trial judge engaged in a thorough colloquy with him about the ramifications of his plea. Appellant cannot withdraw his plea because the court's

advisement of potential immigration consequences was amply documented in the record and sufficient to demonstrate informal and voluntary waivers.

The sentencing judge placed appellant on five years probation, with standard conditions, including one year in county jail, with 171 days credit for time served. Although the probation report recommended a sentence of six months in county jail, the trial court ordered one year of incarceration because appellant had violated a restraining order by making contact with victim and daughter; appellant showed up at his victim's work and broke into her house three times; the misdemeanor events involved the same victim; and appellant's behavior escalated from stalking his victim to choking her. There was no error in sentencing.

On July 23, 2009, appellant filed a timely appeal with an application for certificate of probable cause. The court granted the certificate of probable cause on July 27, 2009. The opening *Wende* brief was filed on December 3, 2009.

DISPOSITION

Our independent review of the record reveals no arguable issues other than the sufficiency of the court's Penal Code section 1016.5 advisement and validity of appellant's plea, discussed above. The judgment is affirmed.

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Lambden, J.

We concur:

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Haerle, Acting P.J.

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Richman, J.